IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6297 OF 2007

Vitthal Rajaram Jadhav ...Petitioners

Versus

Sadanand Sitaram Jadhav....Respondents

Mr.A.A.Kumbhakoni, for the petitioners.

Mr.Purushottam G.Chavan for respondent no.3.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. In pursuance of the earlier order passed by this court, an Affidavit has been filed by Respondent nos.1 to 3 and para-7 of the same reads thus ;-

> "7. I say that the Respondent nos.1 to 3 are in possession and cultivation of the suit property at Gat No.128A and 128B to the extent of 1/2 portion towards the northern side. I say that the present petitioner is in cultivation and possession of the suit property in remaining 1/2 portion (8 anna hissa) southern side. There is common divider (Bandh) dividing and demarking the separate

share allotted to the petitioner and the Respondent nos.1 to 3. Hereto annexed and marked as Annexure-3 is the copy of the rough sketch map of the suit property more particularly mentioned at Sr.No.1 and 2 in para 1 of the plaint in R.C.S.No.237 of 2005.

2. In the light of this Affidavit, both sides inform me that the order of injunction granted by the lower Appellate Court on 9.7.2007 in Misc. Civil Appeal No.42 of 2007 should be modified and the injunction must be restricted in favour of the present respondent nos.1 to 3 in terms of para-7 of the Affidavit reproduced above.

3. It is therefore clarified that the interim injunction is restricted to the lands which have been more particularly described in the above para. The injunction therefore to operate in favour of the original plaintiffs, insofar as, Gat No.128-A, 128-B to the extent of half portion on the northern side of these lands. Needless to clarify, that the petitioner is in cultivation and possession of the southern half portion of the suit property.

4. The order granting police protection for implementing and executing the order of the Trial Court, also be seen as restricted to the above portions.

5. Writ Petition is accordingly disposed off.

6. At the request of learned Counsel appearing for respondent nos.1 to 3 the reference to the Regular Civil Appeal in my order dated 29.11.2007 stands corrected and it is clarified that the said Regular Civil Appeal No. 171 of 2004 was preferred by Respondent no.3 alone.

7. The Trial Court to decide the subject suit uninfluenced by any observations and findings at the prima-facie stage.

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